

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR
BOARD OF CONTROL DECISION ON:

Statutes 1980, Chapter 1143
Claim No. 3929

Directed by Statutes 2004, Chapter 227,
Sections 109-110 (Sen. Bill No. 1102)
Effective August 16, 2004.

Case No.: 04-RL-3929-05

***Regional Housing Needs Determination-
Councils of Governments***

NOTICE OF RECONSIDERATION,
BRIEFING AND HEARING SCHEDULE

HEARING DATE: March 31, 2005

TO: League of California Cities
California State Association of Counties
Department of Finance
State Controller's Office
Director, Department of Housing and Community Development
Legislative Analyst
Interested Parties and Legislative Committees

Statutes 2004, chapter 227, section 109 (Sen. Bill No. 1102, effective Aug. 16, 2004), requires the Commission on State Mandates to reconsider former State Board of Control decision 3929 regarding the regional housing needs mandate for Councils of Governments enacted by Statutes 1980, chapter 1143. Specifically, the Commission is directed to determine whether Statutes 1980, chapter 1143, imposes a reimbursable mandate under section 6 of article XIII B of the California Constitution "in light of federal and state statutes enacted and federal and state court decisions¹ rendered since chapter 1143 was enacted, including the existence of fee authority pursuant to section 65584.1 of the Government Code." The Commission is also directed, if necessary, to revise its parameters and guidelines to be consistent with this reconsideration. Any changes by the Commission shall be deemed effective July 1, 2004.

Administrative Record

The administrative record for reconsideration will consist of the original test claim and related filings and exhibits, Board of Control decisions, parameters and guidelines, State Controller's Claiming Instructions, minutes of the Board of Control and the Commission on State Mandates. The administrative record will be supplemented with Statutes 2004, chapter 227, all correspondence, public comments and briefs filed pursuant to this notice

¹ See Attachment 1 for a partial list of court decisions rendered since the statute was enacted.

of reconsideration. The Commission will begin posting this record on its website (www.csm.ca.gov) on November 5, 2004. See Attachment 2 for a summary procedural history of this claim. Whenever the website is updated, the mailing list will be notified.

Commission members shall receive copies of the administrative record of the original test claim proceedings (including parameters and guidelines and statewide cost estimate), and all documents on reconsideration, including the draft staff analysis, comments and briefs filed by interested parties, interested persons, and affected state agencies, and the final staff analysis and exhibits.

Mailing List

Commission staff has created a consolidated e-mail list for this reconsideration. This notice is being e-mailed to the list provided by Mark Stivers, Senate Housing and Community Development Committee, and also to interested parties and affected state agencies that have been identified by the Commission on State Mandates. On the reconsideration, there is no lead claimant and the Legislature is the requestor.

Request for Initial Briefing: **Opening Briefs due on December 1, 2004**

Rebuttal Comments are due January 3, 2005

Commission staff requests that the parties file opening briefs and rebuttal comments on the following issues:

- Are Councils of Governments eligible claimants under article XIII B, section 6² of the California Constitution?
- Does Statutes 1980, chapter 1143 impose a new program or higher level of service within an existing program on Councils of Governments within the meaning of article XIII B, section 6 and costs mandated by the state pursuant to section 17514 of the Government Code?
- Does Government Code section 17556,³ including the existence of fee authority, preclude the Commission from finding that any of the statutory provisions impose costs mandated by the state?
- Have funds been appropriated for this program (e.g., state budget)⁴ or are there any other sources of funding available? If so, what is the source?⁵

Any interested party, affected state agency, or interested person may comment, submit briefs, or correspond with the Commission on this request for initial briefing and rebuttal comments. An original and one copy or an original and a .pdf file shall be submitted to the Commission. The comments will be posted on the Commission's website. This will

² As of November 2, 2004, Proposition 1A amends article XIII B, section 6 of the California Constitution.

³ Government Code section 17556, was amended by Statutes 2004, chapter 895 (Assem. Bill No. 2855).

⁴ See Government Code section 17556, subdivision (e), as amended by Statutes 2004, chapter 895 (Assem. Bill No. 2855).

satisfy all the service requirements under California Code of Regulations, title 2, section 1181.2.⁶

All filings must comply with the following requirements:

- Assertions or representations must be supported by documentary evidence and must be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge or information or belief.
- If the comments or briefs cite to federal or state laws, regulations, executive orders, or court decisions, copies of those documents must be included in the filing. Court decisions that involve the Board of Control or the Commission on State Mandates are exempt from this requirement.

Draft Staff Analysis and Comments

On **January 20, 2005**, the draft staff analysis and any supporting documentation will be posted to the Commission's website. All parties and interested parties will be notified of the website posting.

Interested parties, affected state agencies, and interested persons are invited to file comments with the Commission on the draft staff analysis by **February 17, 2005**.

An original and one copy or an original and a .pdf file shall be submitted to the Commission. The comments will be posted on the Commission's website. This will satisfy all the service requirements under California Code of Regulations, title 2, section 1181.2.

Comments on the draft staff analysis must comply with the following requirements:

- Assertions or representations must be supported by documentary evidence and must be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge or information or belief.
- If the comments cite to federal or state laws, regulations, executive orders, or court decisions, copies of those documents must be included in the filing. Court decisions that involve the Board of Control or the Commission on State Mandates are exempt from this requirement.

Commission Hearing – March 31, 2005

The Commission will hear and determine this reconsideration and may adopt the proposed revised statement of decision on March 31, 2005. If a decision is not adopted in March, the revised statement of decision will be set for adoption at the **May 26, 2005** hearing.

⁶ The Commission's regulations are at California Code of Regulations, title 2, section 1181 et seq.

With the exception of section 1188.4 of the Commission's regulations, the hearing procedures in article 7 of the Commission's regulations in effect at the time of the hearing will apply. Since this reconsideration was not requested pursuant to Government Code section 17559, the hearing procedures set forth in section 1188.4 do not apply in this case.

Representatives of interested parties and affected state agencies and the Legislature will be asked to notify the Commission staff if they wish to testify. Time limits may be imposed if necessary.

A final staff analysis on the reconsideration will be issued and posted to the Commission's website on or about **March 10, 2005**, unless the decision is adopted at the May 26, 2005 hearing.

Parameters and Guidelines

The Commission, if necessary, shall revise its parameters and guidelines to be consistent with this reconsideration. Any changes by the Commission shall be deemed effective July 1, 2004.⁷ A prehearing conference may be scheduled if requested by any party. See sections 1183.04 and 1187.4 of the Commission's regulations.

If you have any questions regarding this matter, please contact Eric Feller, Commission Counsel, at (916) 323-8221.

Dated: November 5, 2004

PAULA HIGASHI, Executive Director

⁷ See Statutes 2004, chapter 227, section 110.

MANDATES COURT DECISIONS

- *City of Merced v. State of California* (1984) 153 Cal.App.3d 777; 200 Cal.Rptr. 642.
- *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62; 222 Cal.Rptr. 750.
- *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46; 729 P.2d 202; 233 Cal.Rptr. 38.
- *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal. App.3d 521; 234 Cal.Rptr. 795.
- *Division of Occupational Safety and Health v. State Board of Control* (1987) 189 Cal. App.3d 794; 234 Cal.Rptr. 661.
- *City of Anaheim v. State of California* (1987) 189 Cal.App.3d. 1478; 235 Cal.Rptr. 101.
- *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830; 750 P.2d 318; 244 Cal.Rptr. 677; 45 Ed. Law Rep. 321.
- *Los Angeles Unified School District v. State of California* (1988) 199 Cal.App.3d 686.
- *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538; 263 Cal.Rptr. 351.
- *City of Sacramento v. State of California* (1990) 50 Cal.3d 51; 785 P.2d 522; 266 Cal.Rptr. 139.
- *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155; 275 Cal.Rptr. 449; 64 Ed. Law Rep. 182.
- *County of Fresno v. Stephen R. Lehman* (1991) 229 Cal.App.3d 340; 280 Cal.Rptr. 310.
- *Los Angeles Unified School District v. State of California et al.* (1991) 229 Cal.App.3d 552; 280 Cal.Rptr. 237.
- *County of Fresno v. State of California* (1991) 53 Cal.3d 482; 808 P.2d 235; 280 Cal.Rptr. 92.
- *Kinlaw v. State of California* (1991) 54 Cal.3d 326; 814 P.2d 1308; 285 Cal.Rptr. 66.
- *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564; 15 Cal.Rptr.2d 547; 79 Ed. Law Rep. 924.

- *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805; 38 Cal.Rptr.2d 304.
- *Berkeley Unified School District v. State of California et al.* (1995) 33 Cal.App.4th 350; 39 Cal.Rptr.2d 326.
- *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates, et al.* (1996) 43 Cal.App.4th 1188; 51 Cal. Rptr. 2d 100.
- *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802; 53 Cal.Rptr.2d 521.
- *County of San Diego v. State of California* (1997) 15 Cal.4th 68; 931 P.2d 312; 61 Cal. Rptr.2d 134.
- *Redevelopment Agency v. Commission on State Mandates* (1997) 55 Cal.App.4th 976; 64 Cal. Rptr.2d 270.
- *Kathleen Connell, as Controller, et al., v. Superior Court of Sacramento County, Santa Margarita Water District* (1997) 59 Cal.App.4th 382; 69 Cal. Rptr.2d 231.
- *City of Richmond v. Commission On State Mandates, et al.* (1998) 64 Cal.App.4th 1190; 75 Cal. Rptr.2d 754.
- *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266; 99 Cal.Rptr.2d 33.
- *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265; 86 Cal.App.4th 25B; 101 Cal. Rptr.2d 784.
- *Carmel Valley Fire Protection District, et al. v. State of California, et al.* (2001) 25 Cal.4th 287; 105 Cal. Rptr.2d 636.
- *Department of Finance v. Commission on State Mandates, et al.* (2003) 30 Cal.4th 727; 134 Cal. Rptr. 2d 237.
- *County of Los Angeles v. Commission on State Mandates, et al.* (2003) 110 Cal. App. 4th 1176; 2 Cal. Rptr.3d 419.
- *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859.

PROCEDURAL HISTORY OF BOARD OF CONTROL DECISION

Housing Elements: Regional Share Housing Needs Determinations, Councils of Governments Claim, Filed by the Association of Bay Area Governments (SB 90-3929).

On July 22, 1981, the Association of Bay Area Governments filed a claim alleging that chapter 1143 of Statutes of 1980 mandated a new program upon the Councils of Governments. On August 19, 1981, the Board of Control determined that Statutes 1980, chapter 1143, resulted in state-mandated costs for the “new program” to be provided by councils of governments. On October 12, 1981, the parameters and guidelines for this program were adopted. On December 16, 1981, the Board of Control amended the parameters and guidelines.

On January 20, 1982, the Board adopted the Proposed Estimate of Statewide Costs incurred under Statutes 1980, chapter 1143:

1980-81	\$88,335.
1981-82	303,626.
1982-83	332,679
1983-84	239,242

On October 25, 1984, the Board considered a proposed amendment to the parameters and guidelines. According to the Minutes, the Board, “by general consent, agreed to amend the parameters and guidelines in accordance with deadlines established by AB 3618.” The Department of Housing and Community Development (HCD) requested that the Board further amend the parameters and guidelines by moving the deadline for the second housing revision to one year earlier, in order to help local governments meet deadlines established in AB 1597. The Board amended the parameters and guidelines in accordance with staff’s recommendation and the recommendation of HCD.

On September 22, 1988, the Commission on State Mandates technically amended the parameters and guidelines at the request of the Southern California Association of Governments. The amendment extended the deadline for reimbursable costs to include the 150-day revision and review process provided for in Government Code section 65584, subdivision (c).